IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

CRP.No. 1038 of 2003()

AGAINST THE ORDER DATED 19/09/2002 IN EP. 214 /1999 IN OS.560/1987 of ADDL.SUB COURT,KOTTAYAM

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PETITIONER/1ST JUDGMENT DEBTOR/RESPONDENT NO.1:

E.P.JOSEPH, ERUPPAKKATTU KARUVANMUZHY BHAGOM, ERUMELY.

BY ADV. SRI.T.I.ABDUL SALAM

RESPONDENTS: DECREE HOLDER & JUDGMENT DEBTORS 2 & 3 RESPTS PETITIONERS AND RESPONDENTS 2 AND 3:

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1. **K.N.NEELAKANTAN NAMBOOTHIRI, KANDANCHATHUMANA, NARAYANATHARA DESOM, CHOOLASSERRY VILLAGE, THRISSIVAPEROOR,**

2. **WILSON P.ANTONY, PAYYAPPILLIL, CHIYYARAM P.O., THRISSUR.**

3. **THOMAS JOHN, MALAPRAVANAL, KUNNUNMBHAGAM, KANJIRAPPALLY VILLAGE.**

BY

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 10/08/2007 ALONG WITH CRP NO. 1044 OF 2003 AND CRP NO. 1045 OF 2003, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J.

C.R.P.Nos.1038,1044 &
1045 OF 2003

Dated this the 10th August, 2007.

O R D E R

These revision petitions are preferred against the orders of the Additional Subordinate Judges, Kottayam in E.P.214/99. C.R.P.1038/03 is directed against the order of the Subordinate Judge's Court closing the evidence. C.R.P.1045/03 is against an order passed by the Subordinate Judge for issuing warrant of arrest against the revision petitioner and C.R.P.1044/03 is preferred against the order rejecting the prayer to review the order passed against arrest. The grievance of the revision petitioner appears to be that he was not given opportunity to adduce evidence in support of his contentions. The execution petition is one for arrest and detention of the revision petitioner in jail for non-payment of the decree amount. A perusal of the order in C.R.P.1045/03 would reveal that the court receiver who is the decree holder deposed before the court that the revision petitioner was a Secretary of a Co-operative Bank and he has 3 acres of rubber estate and therefore has the means to pay the decree debt. No contra evidence was adduced by the judgment debtor. Since sending a person to jail affects his civil liberty, the court

should have given an opportunity to examine him and thereafter should have decided the matter in accordance with law. I feel interest of justice demands such an opportunity to be given to the judgment debtor to adduce evidence in support of his contentions. Therefore, all the civil revision petitions are disposed of as follows. Since I am allowing C.R.P.1045/03 the question of review of that order which is under challenge in C.R.P.1044/03 does not loom large. Similarly since opportunity is given to adduce evidence the order closing the evidence also pales to insignificance. Therefore, the order under challenge is set aside and the case is remitted back to the Additional Subordinate Judge's Court, Kottayam for fresh consideration of the means of the first judgment debtor, with liberty to adduce both documentary and oral evidence. Needless to say that decree holder also will be at liberty to produce further documents and evidence in support of its contents. Parties are directed to appear before the court below on 10.9.2007.

M.N.KRISHNAN
Judge

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